

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY,
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND,
DISTRICT COUNCIL 37, AFSCME - HEALTH
& SECURITY PLAN, JUNE SWAN,
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and McKESSON CORPORATION,
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

[FILED UNDER SEAL]

**DECLARATION OF LORI A. SCHECHTER IN SUPPORT OF MCKESSON
CORPORATION'S SURREPLY IN OPPOSITION TO CLASS CERTIFICATION**

[REDACTED VERSION]

I, Lori A. Schechter, declare as follows:

1. I am a partner in the law firm of Morrison & Foerster and one of the attorneys of record for McKesson Corporation ("McKesson") in this action. I submit this declaration in support of McKesson's memorandum in opposition to class certification.

2. True and correct copies of documents and deposition transcripts excerpts produced to McKesson in this action are attached as exhibits to this declaration as follows:

Tab	Producing Party or Witness Affiliation	Description
	Blue Cross Blue Shield Montana (TPP)	
23		Deposition of Tina Wong dated November 14, 2006
	Express Scripts, Inc. (PBM)	
24A		Email exchange between [REDACTED] and E. Conley at Express Scripts, dated April 15, 2002 (ESI-414-00001870-74)
24B		E-mail from K. Abe at Express Scripts to T. Wong and R. Arnold at Blue Cross & Blue Shield of Montana, dated April 22, 2002 (ESI-414-00003677-78)
24C		Email from [REDACTED] to K. Wuflestad at Express Scripts, dated May 7, 2002 (ESI-414-00003722-28)
24D		Email exchange between [REDACTED] and J. Chase at Express Scripts, dated April 17, 2002 and April 25, 2002 (ESI-414-00003758-59)
24E		Email from [REDACTED] to S. Crawford at Express Scripts, dated May 14, 2002 (ESI-414-00003785-86)
24F		E-mail from [REDACTED] to E. Conley at Express Scripts, dated April 16, 2002 (ESI-414-00004109)

Tab	Producing Party or Witness Affiliation	Description
	Dr. Hartman (Plaintiffs' Expert)	
25		Deposition of Raymond S. Hartman, dated October 4, 2006 and October 5, 2006
	Susan Hayes (Plaintiffs' Expert)	
26		Deposition of Susan Hayes, dated October 26, 2006
	Hewitt Associates LLC (Benefits Consultant)	
27		Deposition of Matthew Gibbs dated October 27, 2006
	Johnson & Johnson	
28		Email from R. Fair to A. Ianucci, M. Peterson, and M. Wright at [REDACTED], dated May 9, 2002 (MDL-[REDACTED])
	ProMedica (TPP)	
29		E-mail from M. Chen at Express Scripts to N. Karwal at ProMedica, dated February 27, 2007 (PROMEDICA/NEC 00006-8).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 7th day of May, 2007, in San Francisco, California.

/s/ Lori A. Schechter
Lori A. Schechter

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon each other party via overnight mail on May 7, 2007.

/s/ Lori A. Schechter
Lori A. Schechter

Exhibit 23

Page 1

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 COPY

NEW ENGLAND CARPENTERS BENEFITS)
FUND, et al.)
Plaintiffs,)
vs.) Civil Action
FIRST DATABASE and MCKESSON)
CORPORATION, ()
Defendants.)
)

Taken at 404 Fuller Avenue
Helena, Montana
Tuesday, November 14, 2006 - 9:15 a.m.

D E P O S I T I O N
OF
TINA WONG

Reported by Mary R. Sullivan, RPR, RMR, Freelance
Court Reporter and Notary Public, State of Montana,
residing in Missoula, Montana.

1 benefit changes, different things that we could do to
2 help lower our pharmacy trend.

3 Q. Do you remember when that financial review
4 happened or did it happen over a period of time?

5 A. Yeah, it definitely--during, you know, those
6 two years, yes.

7 Q. Okay. And during that financial review, ESI
8 noted for you that your trend was higher than normal?

9 A. Well, yes, and I guess slowly, you know, in
10 the years previous to that it had slowly--I mean, it
11 had always been increasing, but I guess just in a
12 more--at an increased rate in those, you know, couple
13 years.

14 Q. And in reaction to that increased rate, did
15 Blue Cross/Blue Shield of Montana implement some
16 changes in order to control costs in the 2000 to 2001
17 period?

18 A. You know, we discussed a lot of different
19 options at that time, and did kind of plan for some
20 clinical programs for the next couple years that we
21 were going to roll out. We also--I think--I want to
22 say roughly 2003, I think, we ended up making a--our--
23 increasing our co-payments on our drugs. So, yeah, I
24 mean, we definitely thought of some different things
25 that we could do to help control some of our costs.

1 Kind of steer drugs--or steer members also towards more
2 generic drugs, because even at that time we were
3 looking at, you know, trying to increase our generic
4 utilization.

5 Q. So you started discussing it in the 2002,
6 2001 time period, but didn't implement it until later.

7 A. Right.

8 Q. Okay. And the clinical programs you were
9 discussing include the step therapy we were talking
10 about--

11 A. Yes.

12 Q. --and the prior authorization we were talking
13 about?

14 A. Correct.

15 Q. The other things that you were discussing
16 during this time period, you said co-pays, changing
17 co-pays?

18 A. Uh-huh.

19 Q. Anything else that you discussed during this
20 time period?

21 A. I think also during that time period was when
22 we discussed implementing a mandatory generic
23 program instead of--we had just a restricted generic
24 program, so we got a little bit more aggressive, you
25 know, when there was a generic available, then a

1 Blue Cross and Blue Shield of Montana.

2 A. No.

3 Q. Okay. Have you had discussions with anyone
4 else about the differences between WAC and AWP?

5 A. Yes, and specifically with Mark Eichler, our
6 pharmacy consultant--

7 Q. Uh-huh.

8 A. --and then my previous deposition two years
9 ago.

10 Q. Uh-huh. And what did you discuss with Mark
11 Eichler?

12 A. You know, just trying to, you know, get--this
13 was, you know, many years ago, but just trying to get
14 an understanding of, you know, where--what WAC meant
15 and AWP and just kind of the relationship. It's pretty
16 much where I got my information from.

17 Q. So your understanding of the difference
18 between WAC and AWP comes from Mark?

19 A. Yes.

20 Q. And did he tell you anything else about the
21 relationship between WAC and AWP that we haven't
22 already discussed?

23 A. No, he didn't.

24 Q. When did you have this discussion with him?

25 A. It--you know, it's--I want to say roughly,

1 you know, 1997, maybe. It's been a long time.

2 Q. So your understanding of WAC and AWP haven't
3 changed since then?

4 A. No, I don't think so.

5 Q. Why don't we take our lunch break, if that's
6 okay with you--

7 A. That's fine.

8 Q. --since it's almost noon.

9 MS. CHEUNG: Why don't we go off the record.

10 THE VIDEOGRAPHER: Okay. The time is 11:55.
11 We're off the record.

12 (Whereupon, the deposition was in recess at
13 11:55 a.m., and subsequently reconvened at 12:34 p.m.,
14 and the following proceedings were had and entered of
15 record:)

16 THE VIDEOGRAPHER: We're on the record. The
17 time is 12:34.

18 Q. (By Ms. Cheung) Welcome back.

19 A. Thank you.

20 Q. Before the break, we were discussing
21 differences between WAC and AWP, do you remember
22 that?

23 A. Yes.

24 Q. Can you tell me whether Blue Cross/Blue
25 Shield of Montana has ever looked at pharmacy

1 C E R T I F I C A T E
2

3 STATE OF MONTANA)

4 : ss.
5 County of Missoula)6 I, Mary Sullivan, Freelance Court Reporter and
7 Notary Public for the State of Montana, residing in
8 Missoula, Montana, do hereby certify:9 That I was duly authorized to and did report
10 the deposition of TINA WONG in the above-entitled
11 cause;12 That the reading and signing of the deposition
13 by the witness have been expressly reserved.14 That the foregoing pages of this testimony
15 constitute a true and accurate transcription of my
16 stenotype notes of the testimony of said witness.17 I further certify that I am not an attorney
18 nor counsel of any of the parties; nor a relative or
19 employee of any attorney or counsel connected with the
20 action, nor financially interested in the action.21
22
23 IN WITNESS WHEREOF, I have hereunto set my
24 hand on this the 21st day of November, 2006.
25

23 Mary Sullivan, RPR, RMR
24 Freelance Court Reporter
25 Notary Public, State of Montana
Residing in Missoula, Montana
My Commission expires: 4-06-10

Exhibit 24A

From: Conley, Erin (STL)
Sent: Monday, April 15, 2002 12:21 PM
To: [REDACTED]
Cc: Barklage, Sandy (STL)
Subject: FW: FDB_Impacted_NDC_List.xls

Attachments: FDB_Impacted_NDC_List.xls

[REDACTED]

This is the list of drugs that our analysis has shown were increased greater than the corresponding WAC increase. This is a list of those increased through the end of February. We will complete another analysis later if this situation continues to show increasing AWPs relative to WACs. To date the increases should result in an increase in trend to our clients of [REDACTED]. If these increases are applied to all drugs that currently are WAC +16% (they would be raised to WAC +20%) then the trend impact would be in the [REDACTED] range.

Please reserve distribution of this list to only those that truly need this level of detail.


FDB_Impacted_ND
C_List.xls (27 ...)

This file includes only the NDCs that had a change in AWP in excess of any change in WAC, December 2001 vs. February 2002. In other words, if both the AWP and WAC moved in tandem, then they were excluded from this list. Our attempt was to capture only those NDCs that had an AWP change influenced by the FDB policy change.

Erin,
This is "ugly" news! When can we get some "drill-down" specifics per therapeutic category to revise our expense trends and start strategizing management approaches? [REDACTED]

Tracking: Recipient
[REDACTED]
Barklage, Sandy (STL)

NDC List for NDCs experiencing an unequal change in AWP and WAC
 (AWP changed in excess of WAC)

Source: PriceCheck PC (First Data Bank)

ITEM #	DRUG NAME	STRENGTH	MANUFACTURER
00074258611	BIAxin	TAB 500MG	ABBOTT
00074336811	BIAxin	TAB 250MG	ABBOTT
00173033602	BECONASE NA AER INHALER		ALLEN&HAN
00173038879	BECONASE AQ SPR 0.042%		ALLEN&HAN
00173045301	FLONASE SPR 0.05%		ALLEN&HAN
00310060412	NOLVADEX TAB 20MG		ASTZEN
00310013410	ZESTRIL TAB 40MG		ASTZEN
00310013510	ZESTRIL TAB 2.5MG		ASTZEN
00310014110	ZESTORETIC TAB 10/12.5		ASTZEN
00310040239	ACCOLATE TAB 20MG		ASTZEN
00310013010	ZESTRIL TAB 5MG		ASTZEN
00310013034	ZESTRIL TAB 5MG		ASTZEN
00310013039	ZESTRIL TAB 5MG		ASTZEN
00310013110	ZESTRIL TAB 10MG		ASTZEN
00310013134	ZESTRIL TAB 10MG		ASTZEN
00310013139	ZESTRIL TAB 10MG		ASTZEN
00310013173	ZESTRIL TAB 10MG		ASTZEN
00310013210	ZESTRIL TAB 20MG		ASTZEN
00310013234	ZESTRIL TAB 20MG		ASTZEN
00310013239	ZESTRIL TAB 20MG		ASTZEN
00310013273	ZESTRIL TAB 20MG		ASTZEN
00310013310	ZESTRIL TAB 30MG		ASTZEN
00310014210	ZESTORETIC TAB 20-12.5		ASTZEN
00310014510	ZESTORETIC TAB 20-25MG		ASTZEN
00310040160	ACCOLATE TAB 10MG		ASTZEN
00310040260	ACCOLATE TAB 20MG		ASTZEN
00310089110	SULAR TAB 10MG CR		ASTZEN
00310089139	SULAR TAB 10MG CR		ASTZEN
00310089210	SULAR TAB 20MG CR		ASTZEN
00310089239	SULAR TAB 20MG CR		ASTZEN
00310089310	SULAR TAB 30MG CR		ASTZEN
00310089339	SULAR TAB 30MG CR		ASTZEN
00310089410	SULAR TAB 40MG CR		ASTZEN
00310070510	CASODEX TAB 50MG		ASTZEN
00310070530	CASODEX TAB 50MG		ASTZEN
00310060060	NOLVADEX TAB 10MG		ASTZEN
00310060430	NOLVADEX TAB 20MG		ASTZEN
00310060018	NOLVADEX TAB 10MG		ASTZEN
00310060075	NOLVADEX TAB 10MG		ASTZEN
00310060490	NOLVADEX TAB 20MG		ASTZEN
00186000131	LEXXEL TAB 5-5MG		ASTZEN LP
00186000231	LEXXEL TAB 5-2.5MG		ASTZEN LP
00186000168	LEXXEL TAB 5-5MG		ASTZEN LP
00186107008	RHINOCORT SUS AQUA		ASTZEN LP
00186107509	RHINOCORT AER 32MCG		ASTZEN LP
00186502031	NEXIUM CAP 20MG		ASTZEN LP

00186504031	NEXIUM	CAP 40MG	ASTZEN LP
00186502054	NEXIUM	CAP 20MG	ASTZEN LP
00186502228	NEXIUM	CAP 20MG	ASTZEN LP
00186504054	NEXIUM	CAP 40MG	ASTZEN LP
00186504228	NEXIUM	CAP 40MG	ASTZEN LP
00186074231	PRILOSEC	CAP 20MG CR	ASTZEN LP
00186060628	PRILOSEC	CAP 10MG CR	ASTZEN LP
00186060668	PRILOSEC	CAP 10MG CR	ASTZEN LP
00186060682	PRILOSEC	CAP 10MG CR	ASTZEN LP
00186074228	PRILOSEC	CAP 20MG CR	ASTZEN LP
00186074282	PRILOSEC	CAP 20MG CR	ASTZEN LP
00186074328	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186074331	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186074368	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186074382	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186060631	PRILOSEC	CAP 10MG CR	ASTZEN LP
00075150543	NASACORT	AER 55MCG/AC	AVENTIS
00026286151	PRECOSE	TAB 50MG	BAYER PHA
00026286148	PRECOSE	TAB 50MG	BAYER PHA
00026851248	CIPRO	TAB 250MG	BAYER PHA
00026851251	CIPRO	TAB 250MG	BAYER PHA
00026851348	CIPRO	TAB 500MG	BAYER PHA
00026851351	CIPRO	TAB 500MG	BAYER PHA
00026851448	CIPRO	TAB 750MG	BAYER PHA
00026855136	CIPRO	SUS 5G/100ML	BAYER PHA
00026286251	PRECOSE	TAB 100MG	BAYER PHA
00026851450	CIPRO	TAB 750MG	BAYER PHA
00026855336	CIPRO	SUS 10GM/100	BAYER PHA
00026286351	PRECOSE	TAB 25MG	BAYER PHA
00026851108	CIPRO CYSTIT TAB	100MG	BAYER PHA
00087015846	MONOPRIL	TAB 10MG	BMS-PC
00087015885	MONOPRIL	TAB 10MG	BMS-PC
00087060942	MONOPRIL	TAB 20MG	BMS-PC
00087060945	MONOPRIL	TAB 20MG	BMS-PC
00087060985	MONOPRIL	TAB 20MG	BMS-PC
00087120213	MONOPRIL	TAB 40MG	BMS-PC
00087149201	MONOPRIL HCT TAB	10/12.5	BMS-PC
24208027509	OPTIPRANOLOL SOL	0.3% OP	BSCH & LM
00173045003	IMITREX	TAB 100MG	CERENEX
00173045900	IMITREX	TAB 50MG	CERENEX
00173040106	ACLOVATE	CRE 0.05%	ELAN PHAR
00173040208	ACLOVATE	OIN 0.05%	ELAN PHAR
00173040100	ACLOVATE	CRE 0.05%	ELAN PHAR
00173040200	ACLOVATE	OIN 0.05%	ELAN PHAR
00173040101	ACLOVATE	CRE 0.05%	ELAN PHAR
00173040201	ACLOVATE	OIN 0.05%	ELAN PHAR
50242002608	NUTROPIN AQ	INJ 5MG/ML	GENENTECH
50242003235	NUTROPIN	KIT DEPOT	GENENTECH
50242003249	NUTROPIN	INJ 5MG	GENENTECH
50242003441	NUTROPIN	KIT DEPOT	GENENTECH
50242003450	NUTROPIN	INJ 10MG	GENENTECH

50242003654	NUTROPIN	KIT DEPOT	GENENTECH
00173056502	VALTREX	TAB 1GM	GLAXOSMIT
00173093303	VALTREX	TAB 500MG	GLAXOSMIT
00173093356	VALTREX	TAB 500MG	GLAXOSMIT
00173013555	WELLBUTRIN	TAB 150MG SR	GLAXOSMIT
00173094755	WELLBUTRIN	TAB 100MG SR	GLAXOSMIT
00173069500	ADVAIR DISKU	MIS 100/50	GLAXOSMIT
00173069502	ADVAIR DISKU	MIS 100/50	GLAXOSMIT
00173069602	ADVAIR DISKU	MIS 250/50	GLAXOSMIT
00173069700	ADVAIR DISKU	MIS 500/50	GLAXOSMIT
00173069702	ADVAIR DISKU	MIS 500/50	GLAXOSMIT
00173069600	ADVAIR DISKU	MIS 250/50	GLAXOSMIT
00083006230	TEGRETOL XR	TAB 200MG	NOVARTIS
00083006030	TEGRETOL XR	TAB 400MG	NOVARTIS
00083006130	TEGRETOL XR	TAB 100MG	NOVARTIS
00078017915	LAMISIL	TAB 250MG	NOVARTIS
00078017905	LAMISIL	TAB 250MG	NOVARTIS
00078035105	STARLIX	TAB 60MG	NOVARTIS
00078035205	STARLIX	TAB 120MG	NOVARTIS
00149047101	ACTONEL	TAB 5MG	P&G PHARM
00149047001	ACTONEL	TAB 30MG	P&G PHARM
00149047103	ACTONEL	TAB 5MG	P&G PHARM
00149075202	ASACOL	TAB 400MG EC	P&G PHARM
00149040560	DIDRONEL	TAB 200MG	P&G PHARM
00149040860	DIDRONEL	TAB 400MG	P&G PHARM
00149071001	MACROBID	CAP 100MG	P&G PHARM
00071014423	FEMHRT 1/5	TAB	PFIZER US
00071014445	FEMHRT 1/5	TAB	PFIZER US
00071015523	LIPITOR	TAB 10MG	PFIZER US
00071022006	ACCURETIC	TAB 20/12.5	PFIZER US
00071022206	ACCURETIC	TAB 10/12.5	PFIZER US
00071022306	ACCURETIC	TAB 20/25MG	PFIZER US
00071080340	NEURONTIN	CAP 100MG	PFIZER US
00071080540	NEURONTIN	CAP 300MG	PFIZER US
00071041624	NEURONTIN	TAB 600MG	PFIZER US
00071042624	NEURONTIN	TAB 800MG	PFIZER US
00071052723	ACCUPRIL	TAB 5MG	PFIZER US
00071052740	ACCUPRIL	TAB 5MG	PFIZER US
00071053023	ACCUPRIL	TAB 10MG	PFIZER US
00071053040	ACCUPRIL	TAB 10MG	PFIZER US
00071053223	ACCUPRIL	TAB 20MG	PFIZER US
00071053240	ACCUPRIL	TAB 20MG	PFIZER US
00071053523	ACCUPRIL	TAB 40MG	PFIZER US
00071080524	NEURONTIN	CAP 300MG	PFIZER US
00071015623	LIPITOR	TAB 20MG	PFIZER US
00071015640	LIPITOR	TAB 20MG	PFIZER US
00071080624	NEURONTIN	CAP 400MG	PFIZER US
00071080640	NEURONTIN	CAP 400MG	PFIZER US
00071080324	NEURONTIN	CAP 100MG	PFIZER US
00071015723	LIPITOR	TAB 40MG	PFIZER US
00071015823	LIPITOR	TAB 80MG	PFIZER US

00071091348	LOESTRIN FE TAB 1/20	PFIZER US
00071091548	LOESTRIN TAB 1/20-21	PFIZER US
00071091648	LOESTRIN 21 TAB 1.5/30	PFIZER US
00071091745	LOESTRIN FE TAB 1.5/30	PFIZER US
00071091748	LOESTRIN FE TAB 1.5/30	PFIZER US
00071092815	ESTROSTEP FE TAB	PFIZER US
00071092847	ESTROSTEP FE TAB	PFIZER US
00029152611	BACTROBAN OIN NASAL 2%	SK BEECHA
00032170801	PROMETRIUM CAP 100MG	SOLVAY
00300154111	PREVACID CAP 15MG DR	TAP
00300154119	PREVACID CAP 15MG DR	TAP
00300304611	PREVACID CAP 30MG DR	TAP
00300304613	PREVACID CAP 30MG DR	TAP
00300304619	PREVACID CAP 30MG DR	TAP
00300154130	PREVACID CAP 15MG DR	TAP
00300370201	PREVPAC MIS	TAP
00072140050	ULTRAVATE CRE 0.05%	WEST-SQUI
00072145050	ULTRAVATE OIN 0.05%	WEST-SQUI
00072571208	LAC-HYDRIN LOT 12%	WEST-SQUI
00072026006	DOVONEX CRE 0.005%	WEST-SQUI
00072026012	DOVONEX CRE 0.005%	WEST-SQUI
00072140015	ULTRAVATE CRE 0.05%	WEST-SQUI
00072145015	ULTRAVATE OIN 0.05%	WEST-SQUI
00072254006	DOVONEX OIN 0.005%	WEST-SQUI
00072254012	DOVONEX OIN 0.005%	WEST-SQUI
00072573028	LAC-HYDRIN CRE 12%	WEST-SQUI
00072573038	LAC-HYDRIN CRE 12%	WEST-SQUI
00072116006	DOVONEX SOL 0.005%	WEST-SQUI
00072571214	LAC-HYDRIN LOT 12%	WEST-SQUI

Exhibit 24B

From: Abe, Karen (BLM)
Sent: Monday, April 22, 2002 3:02 PM
To: 'Tina Wong'; 'Roy Arnold, MD'
Cc: O'Brien, Julie (BLM)
Subject: AWP Info

Attachments: AWP increase BMT.doc


AWP increase
BMT.doc (25 KB)

*Karen L. Abe, RPh, MBA
Clinical Program Manager
Express-Scripts, Inc
kabe1@express-scripts.com
PH: (360) 848-0680
FAX: (360) 848-0664*

URGENT! EMERGING THERAPEUTIC ISSUES COMMUNICATION

April 22, 2002

Tina Wong, Pharmacy Coordinator

Dr. Roy Arnold, Sr. VP

Blue Cross Blue Shield of Montana

Dear Tina and Dr. Arnold:

RE: Average Wholesale Price Increases

Pharmaceutical manufacturers make price changes throughout the year. As we have documented in Express Scripts' annual *Drug Trend Report*, for the last four years the average increase in Average Wholesale Price ("AWP") has exceeded 5%. The first wave of price increases typically take place in the January through February timeframe. Over the last couple of years these increases have averaged 1 to 1.5%. This year, however, the increase for this period January through February timeframe is closer to 2.5%. The increase for this period also includes an adjustment to increase the difference between wholesale acquisition cost (WAC) and AWP for certain drugs. In other words a little less than half of the total increase is due to AWP increases that are in excess of the corresponding increase in WAC.

Upon our inquiry to our pricing service, First Data Bank (the industry's primary source for AWP information), the recent AWP adjustments were made to establish a more consistent relationship with WAC. As this trend indicates, it is more important now than ever to put cost management strategies in place.

Sincerely,

Karen L. Abe, Clinical Program Manager

(360) 848-0680

cc: Julie Obrien

Exhibit 24C

From: [REDACTED]
Sent: Tuesday, May 07, 2002 3:29 PM
To: Wuflestad, Kent M. R.Ph. (ESI)
Cc: Vargo, Harry (ESI); Becker, Kim R.Ph. (ESI)
Subject: FW: First DataBank AWP Increases

Follow Up Flag: Follow up
Flag Status: Flagged

Attachments: AWP Increases Memo.doc; FDB_Impacted_NDC_List.xls



AWP Increases FDB_Impacted_ND
Memo.doc (23 KB)... C_List.xls (23 ...

Kent:

Thanks for making yourself available in such short notice for our discussion on First DataBank AWP increases. We look forward to your assistance on calculating [REDACTED] specific trend impact due to this change as well as any update on this item.

[REDACTED]

IMPORTANT: This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.

-----Original Message-----

From: Wuflestad, Kent (BLM) [SMTP:kent.wuflestad@express-scripts.com]
Sent: Wednesday, April 17, 2002 11:17 AM
To: [REDACTED]
Cc: Becker, Kim (BLM); Vargo, Harry (BLM)
Subject: First DataBank AWP Increases

Hi [REDACTED]

In follow-up to our conversation last week, I'm sending two attachments with information on the First Data Bank AWP changes.

- > The first attachment explains a change that has occurred in First Data
- > Bank's approach to establishing AWP pricing for claims processing. The
- > second attachment includes a listing of drugs that have been impacted by
- > the FDB changes so far.
- >
- > In a nutshell, First Data Bank provides ESI with information we use to

> process claims, such as NDC number, package size, AWP price, etc.
> Recently, FDB has begun to standardize their AWP calculation process
> across all manufacturers, which has resulted in an increase in AWP prices.
> The AWP changes that have occurred to date have resulted in an increase in
> trend of [REDACTED] IF these AWP changes are applied to all drugs that
> have AWP's equal to WAC + 16% (they would be raised to WAC + 20%), the
> trend impact would be expected to be in the [REDACTED] range.
>

If you have any further questions, please don't hesitate to call me.

> Kent
> <<AWP Increases Memo.doc>> <<FDB_Impacted_NDC_List.xls>>
>
>
>
> <<AWP Increases Memo.doc>> <<FDB_Impacted_NDC_List.xls>>

URGENT! EMERGING THERAPEUTIC ISSUES COMMUNICATION

Date: April 15, 2002



Dear [REDACTED]

RE: Average Wholesale Price Increases

Pharmaceutical manufacturers make price changes throughout the year. As we have documented in Express Scripts' annual *Drug Trend Report*, for the last four years the average increase in Average Wholesale Price ("AWP") has exceeded 5%. The first wave of price increases typically take place in the January through February timeframe. Over the last couple of years these increases have averaged 1 to 1.5%. This year, however, the increase for this period January through February timeframe is closer to 2.5%. The increase for this period also includes an adjustment to increase the difference between wholesale acquisition cost (WAC) and AWP for certain drugs. In other words a little less than half of the total increase is due to AWP increases that are in excess of the corresponding increase in WAC.

Upon our inquiry to our pricing service, First Data Bank (the industry's primary source for AWP information), the recent AWP adjustments were made to establish a more consistent relationship with WAC. As this trend indicates, it is more important now than ever to put cost management strategies in place.

If we can answer any questions, or if you are interested in the Emerging Therapeutic Issues program and are currently not enrolled, please contact me at your convenience.

Sincerely,

Kent Wuflestad, R.Ph.
Director, Clinical Program Management
952-837-5334

C: [REDACTED]

Stephanie Anderson, Melisse Stenzel-Torres – Express Scripts

NDC List for NDCs experiencing an unequal change in AWP and WAC
 (AWP changed in excess of WAC)
 Source: PriceCheck PC (First Data Bank)

NDC	Product Name	Company
00074258611	BIAXIN TAB 500MG	ABBOTT
00074336811	BIAXIN TAB 250MG	ABBOTT
00173033602	BECONASE NA AER INHALER	ALLEN&HAN
00173038879	BECONASE AQ SPR 0.042%	ALLEN&HAN
00173045301	FLONASE SPR 0.05%	ALLEN&HAN
00310060412	NOLVADEX TAB 20MG	ASTZEN
00310013410	ZESTRIL TAB 40MG	ASTZEN
00310013510	ZESTRIL TAB 2.5MG	ASTZEN
00310014110	ZESTORETIC TAB 10/12.5	ASTZEN
00310040239	ACCOLATE TAB 20MG	ASTZEN
00310013010	ZESTRIL TAB 5MG	ASTZEN
00310013034	ZESTRIL TAB 5MG	ASTZEN
00310013039	ZESTRIL TAB 5MG	ASTZEN
00310013110	ZESTRIL TAB 10MG	ASTZEN
00310013134	ZESTRIL TAB 10MG	ASTZEN
00310013139	ZESTRIL TAB 10MG	ASTZEN
00310013173	ZESTRIL TAB 10MG	ASTZEN
00310013210	ZESTRIL TAB 20MG	ASTZEN
00310013234	ZESTRIL TAB 20MG	ASTZEN
00310013239	ZESTRIL TAB 20MG	ASTZEN
00310013273	ZESTRIL TAB 20MG	ASTZEN
00310013310	ZESTRIL TAB 30MG	ASTZEN
00310014210	ZESTORETIC TAB 20-12.5	ASTZEN
00310014510	ZESTORETIC TAB 20-25MG	ASTZEN
00310040160	ACCOLATE TAB 10MG	ASTZEN
00310040260	ACCOLATE TAB 20MG	ASTZEN
00310089110	SULAR TAB 10MG CR	ASTZEN
00310089139	SULAR TAB 10MG CR	ASTZEN
00310089210	SULAR TAB 20MG CR	ASTZEN
00310089239	SULAR TAB 20MG CR	ASTZEN
00310089310	SULAR TAB 30MG CR	ASTZEN
00310089339	SULAR TAB 30MG CR	ASTZEN
00310089410	SULAR TAB 40MG CR	ASTZEN
00310070510	CASODEX TAB 50MG	ASTZEN
00310070530	CASODEX TAB 50MG	ASTZEN
00310060060	NOLVADEX TAB 10MG	ASTZEN
00310060430	NOLVADEX TAB 20MG	ASTZEN
00310060018	NOLVADEX TAB 10MG	ASTZEN
00310060075	NOLVADEX TAB 10MG	ASTZEN
00310060490	NOLVADEX TAB 20MG	ASTZEN
00186000131	LEXXEL TAB 5-5MG	ASTZEN LP
00186000231	LEXXEL TAB 5-2.5MG	ASTZEN LP
00186000168	LEXXEL TAB 5-5MG	ASTZEN LP
00186107008	RHINOCORT SUS AQUA	ASTZEN LP
00186107509	RHINOCORT AER 32MCG	ASTZEN LP
00186502031	NEXIUM CAP 20MG	ASTZEN LP

00186504031	NEXIUM	CAP 40MG	ASTZEN LP
00186502054	NEXIUM	CAP 20MG	ASTZEN LP
00186502228	NEXIUM	CAP 20MG	ASTZEN LP
00186504054	NEXIUM	CAP 40MG	ASTZEN LP
00186504228	NEXIUM	CAP 40MG	ASTZEN LP
00186074231	PRILOSEC	CAP 20MG CR	ASTZEN LP
00186060628	PRILOSEC	CAP 10MG CR	ASTZEN LP
00186060668	PRILOSEC	CAP 10MG CR	ASTZEN LP
00186060682	PRILOSEC	CAP 10MG CR	ASTZEN LP
00186074228	PRILOSEC	CAP 20MG CR	ASTZEN LP
00186074282	PRILOSEC	CAP 20MG CR	ASTZEN LP
00186074328	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186074331	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186074368	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186074382	PRILOSEC	CAP 40MG CR	ASTZEN LP
00186060631	PRILOSEC	CAP 10MG CR	ASTZEN LP
00075150543	NASACORT	AER 55MCG/AC	AVENTIS
00026286151	PRECOSE	TAB 50MG	BAYER PHA
00026286148	PRECOSE	TAB 50MG	BAYER PHA
00026851248	CIPRO	TAB 250MG	BAYER PHA
00026851251	CIPRO	TAB 250MG	BAYER PHA
00026851348	CIPRO	TAB 500MG	BAYER PHA
00026851351	CIPRO	TAB 500MG	BAYER PHA
00026851448	CIPRO	TAB 750MG	BAYER PHA
00026855136	CIPRO	SUS 5G/100ML	BAYER PHA
00026286251	PRECOSE	TAB 100MG	BAYER PHA
00026851450	CIPRO	TAB 750MG	BAYER PHA
00026855336	CIPRO	SUS 10GM/100	BAYER PHA
00026286351	PRECOSE	TAB 25MG	BAYER PHA
00026851106	CIPRO CYSTIT	TAB 100MG	BAYER PHA
00087015846	MONOPRIL	TAB 10MG	BMS-PC
00087015885	MONOPRIL	TAB 10MG	BMS-PC
00087060942	MONOPRIL	TAB 20MG	BMS-PC
00087060945	MONOPRIL	TAB 20MG	BMS-PC
00087060985	MONOPRIL	TAB 20MG	BMS-PC
00087120213	MONOPRIL	TAB 40MG	BMS-PC
00087149201	MONOPRIL HCT	TAB 10/12.5	BMS-PC
24208027509	OPTIPRANOLOL	SOL 0.3% OP	BSCH & LM
00173045003	IMITREX	TAB 100MG	CERENEX
00173045900	IMITREX	TAB 50MG	CERENEX
00173040106	ACLOVATE	CRE 0.05%	ELAN PHAR
00173040206	ACLOVATE	OIN 0.05%	ELAN PHAR
00173040100	ACLOVATE	CRE 0.05%	ELAN PHAR
00173040200	ACLOVATE	OIN 0.05%	ELAN PHAR
00173040101	ACLOVATE	CRE 0.05%	ELAN PHAR
00173040201	ACLOVATE	OIN 0.05%	ELAN PHAR
50242002608	NUTROPIN AQ	INJ 5MG/ML	GENENTECH
50242003235	NUTROPIN	KIT DEPOT	GENENTECH
50242003249	NUTROPIN	INJ 5MG	GENENTECH
50242003441	NUTROPIN	KIT DEPOT	GENENTECH
50242003450	NUTROPIN	INJ 10MG	GENENTECH

50242003654	NUTROPIN	KIT DEPOT	GENENTECH
00173056502	VALTREX	TAB 1GM	GLAXOSMIT
00173093303	VALTREX	TAB 500MG	GLAXOSMIT
00173093356	VALTREX	TAB 500MG	GLAXOSMIT
00173013555	WELLBUTRIN	TAB 150MG SR	GLAXOSMIT
00173094755	WELLBUTRIN	TAB 100MG SR	GLAXOSMIT
00173069500	ADVAIR DISKU	MIS 100/50	GLAXOSMIT
00173069502	ADVAIR DISKU	MIS 100/50	GLAXOSMIT
00173069602	ADVAIR DISKU	MIS 250/50	GLAXOSMIT
00173069700	ADVAIR DISKU	MIS 500/50	GLAXOSMIT
00173069702	ADVAIR DISKU	MIS 500/50	GLAXOSMIT
00173069600	ADVAIR DISKU	MIS 250/50	GLAXOSMIT
00083006230	TEGRETOL XR	TAB 200MG	NOVARTIS
00083006030	TEGRETOL XR	TAB 400MG	NOVARTIS
00083006130	TEGRETOL XR	TAB 100MG	NOVARTIS
00078017915	LAMISIL	TAB 250MG	NOVARTIS
00078017905	LAMISIL	TAB 250MG	NOVARTIS
00078035105	STARLIX	TAB 60MG	NOVARTIS
00078035205	STARLIX	TAB 120MG	NOVARTIS
00149047101	ACTONEL	TAB 5MG	P&G PHARM
00149047001	ACTONEL	TAB 30MG	P&G PHARM
00149047103	ACTONEL	TAB 5MG	P&G PHARM
00149075202	ASACOL	TAB 400MG EC	P&G PHARM
00149040560	DIDRONEL	TAB 200MG	P&G PHARM
00149040660	DIDRONEL	TAB 400MG	P&G PHARM
00149071001	MACROBID	CAP 100MG	P&G PHARM
00071014423	FEMHRT 1/5	TAB	PFIZER US
00071014445	FEMHRT 1/5	TAB	PFIZER US
00071015523	LIPITOR	TAB 10MG	PFIZER US
00071022006	ACCURETIC	TAB 20/12.5	PFIZER US
00071022206	ACCURETIC	TAB 10/12.5	PFIZER US
00071022306	ACCURETIC	TAB 20/25MG	PFIZER US
00071080340	NEURONTIN	CAP 100MG	PFIZER US
00071080540	NEURONTIN	CAP 300MG	PFIZER US
00071041624	NEURONTIN	TAB 600MG	PFIZER US
00071042624	NEURONTIN	TAB 800MG	PFIZER US
00071052723	ACCUPRIL	TAB 5MG	PFIZER US
00071052740	ACCUPRIL	TAB 5MG	PFIZER US
00071053023	ACCUPRIL	TAB 10MG	PFIZER US
00071053040	ACCUPRIL	TAB 10MG	PFIZER US
00071053223	ACCUPRIL	TAB 20MG	PFIZER US
00071053240	ACCUPRIL	TAB 20MG	PFIZER US
00071053523	ACCUPRIL	TAB 40MG	PFIZER US
00071080524	NEURONTIN	CAP 300MG	PFIZER US
00071015623	LIPITOR	TAB 20MG	PFIZER US
00071015640	LIPITOR	TAB 20MG	PFIZER US
00071080624	NEURONTIN	CAP 400MG	PFIZER US
00071080640	NEURONTIN	CAP 400MG	PFIZER US
00071080324	NEURONTIN	CAP 100MG	PFIZER US
00071015723	LIPITOR	TAB 40MG	PFIZER US
00071015823	LIPITOR	TAB 80MG	PFIZER US

00071091348	LOESTRIN FE TAB 1/20	PFIZER US
00071091548	LOESTRIN TAB 1/20-21	PFIZER US
00071091648	LOESTRIN 21 TAB 1.5/30	PFIZER US
00071091745	LOESTRIN FE TAB 1.5/30	PFIZER US
00071091748	LOESTRIN FE TAB 1.5/30	PFIZER US
00071092815	ESTROSTEP FE TAB	PFIZER US
00071092847	ESTROSTEP FE TAB	PFIZER US
00029152611	BACTROBAN OIN NASAL 2%	SK BEECHA
00032170801	PROMETRIUM CAP 100MG	SOLVAY
00300154111	PREVACID CAP 15MG DR	TAP
00300154119	PREVACID CAP 15MG DR	TAP
00300304611	PREVACID CAP 30MG DR	TAP
00300304613	PREVACID CAP 30MG DR	TAP
00300304619	PREVACID CAP 30MG DR	TAP
00300154130	PREVACID CAP 15MG DR	TAP
00300370201	PREVPAC MIS	TAP
00072140050	ULTRAVATE CRE 0.05%	WEST-SQUI
00072145050	ULTRAVATE OIN 0.05%	WEST-SQUI
00072571208	LAC-HYDRIN LOT 12%	WEST-SQUI
00072026006	DOVONEX CRE 0.005%	WEST-SQUI
00072026012	DOVONEX CRE 0.005%	WEST-SQUI
00072140015	ULTRAVATE CRE 0.05%	WEST-SQUI
00072145015	ULTRAVATE OIN 0.05%	WEST-SQUI
00072254006	DOVONEX OIN 0.005%	WEST-SQUI
00072254012	DOVONEX OIN 0.005%	WEST-SQUI
00072573028	LAC-HYDRIN CRE 12%	WEST-SQUI
00072573038	LAC-HYDRIN CRE 12%	WEST-SQUI
00072116006	DOVONEX SOL 0.005%	WEST-SQUI
00072571214	LAC-HYDRIN LOT 12%	WEST-SQUI

Exhibit 24D

To: [REDACTED]
Cc: [REDACTED]
Subject: RE: FDB AWP Increases

[REDACTED]
It isn't clear yet what the rebate advantage will be of increasing your copayments so there is a \$20.00 differential. When ESI sent out contracting information to our manufacturers to assist them with their 2003 contracts, we added an additional option that we think a lot manufacturers will find attractive. [REDACTED]

[REDACTED] We anticipate a lot of uptake

on this.

-----Original Message-----

From: [REDACTED]
Sent: Thursday, April 25, 2002 9:30 AM
To: 'jennifer.chase@express-scripts.com'
Subject: FW: FDB AWP Increases

HI Jenny,

Welcome back.

Please review [REDACTED] questions and additionally what manufacturer programs are there available that we may be able to take advantage of if [REDACTED] should decide to increase the differential between our co-payments?

Thanks,

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, April 17, 2002 2:40 PM
To: [REDACTED]
Subject: FW: FDB AWP Increases

Please make this a topic of discussion for your monthly call. Will specific step programs help? Will Generics also rise due to these increases?

Advise!

-----Original Message-----

From: Chase, Jennifer (BLM) [mailto:jennifer.chase@express-scripts.com]
Sent: Saturday, April 13, 2002 1:22 PM
To: [REDACTED]
Cc: [REDACTED]; Grochal, Janice (BLM)
Subject: FW: FDB AWP Increases

> Give me a call if you wish to discuss.
> JC
> <<AWP increase.doc>>
>
>
> Jennifer Chase, Pharm.D.
> Managed Care Division
> 952.837.7784
> jennifer.chase@express-scripts.com

>
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Exhibit 24E

From: [REDACTED]
Sent: Tuesday, May 14, 2002 4:45 PM
To: 'Crawford, Sue (BLM)'
Subject: RE: AWP increases from FDB

Hi Sue-

Sorry it took so long to get back to you. I spoke with Tim and it would be good to get the AWP model you discussed. It may be too late for Q4, but this will come in handy as they look to Q1 of next year if we can't make use of it now.

Your new number for ingredient cost is much closer to what we came up with (we were [REDACTED] so we are only [REDACTED] off or so). I am going to ask my folks to take another look at how they pulled this to make sure there is no "noise", but I think we are close enough to be comfortable. Unless anything comes to our attention that would cause another look at the reconciliation (I'm still waiting for the AWP info., but the member split makes me comfortable with the figures you had), my sense is that we just work toward a payback of [REDACTED]. Since we took the prospective adjustment approach, we will just have to make sure we take this into consideration if we change the discount in the next few months once we get a better sense as to how 2002 is shaping up.

Thanks for the update on the insured / ASC mix. I only used the numbers Matt provided to let the group here know that we were not seeing any significant swings from what we expected (i.e. somewhere around [REDACTED]).

Let's plan for 12:00 my time tomorrow. Feel free to call my number.

Thanks,

[REDACTED]
-----Original Message-----

From: Crawford, Sue (BLM) [mailto:sue.m.crawford@express-scripts.com]
Sent: Monday, May 13, 2002 2:15 PM
To: [REDACTED]
Subject: AWP increases from FDB

Mark - I spoke with people in my department to see if there was any updated information regarding the FDB increases to the AWP. I was told that the increase to expect is still in the [REDACTED] range. I did find out however that St. Louis has built a model to look at the drugs in question on a client specific basis to get a more precise estimate of the impact. Would this be beneficial for the 4q pricing meeting or is it too late? Let me know and I will request that St. Louis run the model for [REDACTED].

I also looked into the reconciliation numbers for total ingredient costs, all lines of business, that you were questioning on the reconciliation exhibit. I did find a problem on my end. The number that I reported was the billed ingredient costs + dispensing fees plus any applicable taxes. This is incorrect. Only the actual ingredient cost should be adjusted to reflect the "earned discounted amount" (although technically one could argue that the tax could be overstated if it was calculated on the higher adjudicated amounts). Anyway, the resulting variance in the settlement is right at [REDACTED] for the [REDACTED] contract term. I can't really explain what happened other than when we in UW/Finance talk about "ingredient cost", we typically add in the dispensing fees. I checked to see what was done at the last reconciliation and we only adjusted the calculated costs which makes sense.

The dispensing fees always remain a constant in the pricing. The correct ingredient cost for all lines of business should have been [REDACTED]. Is this number more in line with what you are looking at on your end? If so, we'll have to talk about how this needs to be addressed.

Finally, the percentage of insured to self-insured business based on AWP retail brand spend that Matt reported to you was overstated. Through February, the number is actually [REDACTED] vs. Matt's number of [REDACTED]. He looked at generic spend in error. The files for March are running now so I can update this calculation as soon as I get them if you'd like.

Susan Crawford
Regional Finance Manager
Managed Care Division

Email: sue.m.crawford@express-scripts.com
Phone: 952.837.5119
Fax: 952.837.7161

Exhibit 24F

From: Orvis, Traci (BLM)
To: Tuesday, April 16, 2002 3:57 PM
Subject: Judy A. Myers (E-mail); Susan Feliciano (E-mail)
 FW: Emerging Therapeutic Issues - AWP PRICE INCREASES

fyi..

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, April 16, 2002 3:56 PM
To: 'Conley, Erin (STL)'
Cc: Zopfi, Arnie (BLM); Orvis, Traci (BLM); [REDACTED]
Subject: RE: Emerging Therapeutic Issues - AWP PRICE INCREASES

Erin,

I'd like to put some quantity limits in place where we have none but should and, make some of our existing edits more stringent. We'll need to start with our fully funded plans and move to the self-funded afterwards. I'd also like to try this in TennCare and see what the TC Solutions Unit will let us get away with.

I'd like to move quickly on this. What are your recommendations?
 Thanks.

[REDACTED]

> -----Original Message-----

> From: Conley, Erin (STL) [SMTP:EConley@express-scripts.com]
 > Sent: Monday, April 15, 2002 12:41 PM
 > To: [REDACTED]
 > Cc: Zopfi, Arnie (BLM); Orvis, Traci (BLM)
 > Subject: FW: Emerging Therapeutic Issues - AWP PRICE INCREASES
 >
 > > Hello -
 > >
 > > Please see attached notification regarding recent increases in AWP,
 > > greater than anticipated. Please distribute as appropriate to
 > interested
 > > parties in your organization.
 > >
 > > Thank you,
 > > Erin
 > >
 > > <<AWP increase notification.doc>>
 > >
 > >
 > > Erin L. Conley, Pharm.D.
 > > Clinical Program Manager
 > > Managed Care Division
 > > phone. 314-919-4628
 > > fax. 314-919-4664
 > > econley@express-scripts.com
 > > << File: AWP increase notification.doc >>
 >

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Exhibit 25

Page 1

1 RAYMOND S. HARTMAN
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF MASSACHUSETTS

 ORIGINAL

5 -----x
6 NEW ENGLAND CARPENTERS HEALTH

7 BENEFITS FUND, ET AL.,

8 Plaintiffs

9 Civil Action

10 vs. No. 1:05-CV-11148-PBS

11

12 FIRST DATABANK, INC., and

13 McKESSON CORPORATION,

14 Defendants

15 -----x

16 DEPOSITION OF RAYMOND S. HARTMAN, a
17 witness called by and on behalf of the
18 Defendant McKesson Corporation, taken pursuant
19 Federal Rules of Civil Procedure, before
20 Nicole E. Guilbert, a Notary Public in and for
21 the Commonwealth of Massachusetts, at Bonner,
22 Kiernan, Trebach & Crociata, on Wednesday,
23 October 4, 2006, commencing at 9:46 a.m.

24

25 VOLUME I

1 RAYMOND S. HARTMAN

2 of the manufacturers whose drugs are listed in Appendix A
3 knew about the 5 percent change when it occurred or just
4 some of them; am I correct?

5 A. That's correct.

6 Q. And again, you don't need to know that for
7 purposes of any opinion you're rendering here, correct?

8 A. For the opinions I'm rendering here, that's
9 correct.

10 Q. Now, let's take third-party payors. Did any of
11 them know about the change in the 5 percent at the time it
12 occurred or thereafter?

13 A. I've seen no evidence that any of them knew of the
14 change.

15 Q. No, not the question whether you've seen any
16 evidence, but can you tell me what you're assuming for
17 purposes of rendering your opinion, did some or all
18 third-party payors become aware of the change in the 5
19 percent at the time it occurred or thereafter?

20 A. I'm assuming that the third-party payors continued
21 to get integratable data from First DataBank that included
22 AWPs and WACs. Their primary focus was on AWP and
23 reimbursement off of AWP for this type of drug. Whether
24 they then related that to WAC or not, I've made -- I've
25 made no analysis about that or I've made no assumption

1 RAYMOND S. HARTMAN

2 about whether they observed that or not. The AWP -- the
3 assumption that I have made that flows from the allegations
4 are that that AWP increased from what WAC was and that's
5 what they were working off of.

6 Q. Would it be correct for purposes of the opinions
7 you're rendering here regarding class certification, you
8 don't need to know whether any third-party payor observed
9 or knew of this 5 percent change at the time it happened or
10 shortly thereafter?

11 A. For purposes of my analysis and for the -- the
12 opinions that I come to and the conclusions regarding
13 impact and injury, the -- I'm assuming that the allegations
14 about the spread occurred; that the third-party payors were
15 sufficiently locked into contracts or sufficiently locked
16 into ways of doing business that they -- that they worked
17 off of an AWP; and that knowledge -- I don't know whether
18 they knew or if they didn't know, but it would not change
19 my opinions of whether they did or not.

20 Q. So would it be correct that whether or not
21 third-party payors knew, observed or knew of this 5 percent
22 change in the spread at the time it happened or shortly
23 thereafter, would not make a difference to you in -- for
24 purposes of any opinion you're rendering here; am I
25 correct?

1 RAYMOND S. HARTMAN

2 A. If -- let's say the following: If all third-party
3 payors were made aware of this scheme at the time that it
4 happened and it was made clear to them that what they were
5 paying the -- the reimbursements that they were paying
6 increased to the extent that they did, as indicated by my
7 calculations, such that there were an announcement: that
8 everybody knew, that could change the assumptions about --
9 about -- of -- about -- that would change my opinions or
10 could change my opinions here.

11 Q. Is it correct it doesn't make a difference to you
12 whether third-party payors knew or didn't know about the 5
13 percent change?

14 A. What I'm saying --

15 MR. SOBOL: Objection; asked and
16 answered.

17 THE WITNESS: What I'm saying is that
18 what -- the knowledge that they had over
19 this period of time was insufficient to --
20 to lead to any change in what -- what I've
21 -- my conclusions in this report.

22 THE VIDEOGRAPHER: Here ends Tape 1.

23 Off the record 11:06 a.m.

24 (A brief recess was taken.)

25 THE VIDEOGRAPHER: Here begins Tape

1 RAYMOND S. HARTMAN

2 2. Back on the record 11:17 a.m.

3 Q. (By Mr. Goldman) Dr. Hartman, if I wanted to know
4 whether any third-party payor observed or was told about
5 the 5 percent change after it occurred, would there be a
6 way for me to find out?

7 A. If one wanted to ascertain whether a third-party
8 payor had known of that, was aware of it as soon as it
9 occurred --

10 Q. Or shortly thereafter.

11 A. -- or thereafter, one could design a survey to try
12 and ascertain that.

13 Q. What if I wanted to know if any of the plaintiffs
14 were told or aware or observed this change, is there a way
15 I could find out from them?

16 A. Well, certainly asking them would be a fairly
17 direct way of finding that out.

18 Q. Did you think of doing that here?

19 A. For the purposes of this analysis, I've -- I've
20 been asked to assume what I've been asked to assume, and
21 I've -- I've been asked to rely on what I know of how
22 reimbursement works and how I've observed that over time
23 among third-party payors, and so it wasn't an issue that
24 I've been asked to do here in this -- as part of this
25 analysis.

1 RAYMOND S. HARTMAN

2 Q. So do you know whether any plaintiff in this case
3 knew or was told or became aware of the 5 percent change in
4 spread after it occurred or thereafter?

5 A. I have not been asked to focus on that -- on
6 that -- on that issue.

7 Q. And again, it wouldn't make a difference to you,
8 would it, in terms of any opinion you're rendering here?

9 A. Well, factually, whether third-party payors knew
10 or whether they all knew, whether some of them knew,
11 whether none of them knew is hypothetical to what I've --
12 the opinion I'm rendering here. Based on the facts of what
13 I know of this industry, most of them were unaware of this,
14 that the -- that they all knew or many of them knew run
15 counter to -- and by "know," I mean institutionally make an
16 observation of this and then say: Look, we've observed
17 this is going on. We've got to renegotiate our contracts.
18 We've have to take a position we're going to respond to
19 this because of this effect.

20 And based -- so right now we're speaking very
21 hypothetically of know or not know or -- and what that
22 means, but based on the facts of the industry, as I know
23 them, it's -- it -- I would venture that very few would
24 respond institutionally -- understood enough to respond
25 institutionally to this -- to the allegations in this

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2 matter.

3 Q. Let me -- do you assume, for purposes of the
4 opinion you're giving, that most third-party payors were
5 unaware of the 5 percent change?

6 A. I'm assuming that per my understanding of this --
7 of this industry, that this was a change that -- that was
8 effectuated in a stealthy a manner as was possible; and
9 that once -- once it was observed, if it were observed,
10 that there were contracts in place with various players
11 that changes could not occur on the part of third-party
12 payors to an observed change in the spread.

13 Q. Do you assume that most third-party payors were
14 unaware of the 5 percent change?

15 A. I'm aware of just what I've said.

16 Q. I know, but with all due respect, I don't believe
17 I've gotten an answer. Do you assume that most third-party
18 payors were unaware of the 5 percent change?

19 A. I'm assuming that most third-party payors
20 institutionally could not respond in a way that had any
21 meaning to the 5 percent spread.

22 Q. I'm not asking you about the response. That's
23 separately. I want to know do you assume that most
24 third-party payors were unaware of the 5 percent change?

25 A. Given the earlier answer, that question is not

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2 relevant and I haven't addressed it.

3 Q. So would it be correct you make no assumption as
4 to whether some, all, or most third-party payors were aware
5 of the 5 percent change for purposes of any opinion you're
6 giving here?

7 MR. SOBOL: Objection; asked and
8 answered.

9 THE WITNESS: I'm assuming that the
10 third-party payors are aware of these types
11 of issues in the ways that I've seen in
12 dep -- in enumerable depositions; that
13 there is a general lack of awareness of
14 these kinds of issues on the part of
15 third-party payors. And so the -- I'm
16 taking -- I'm assuming that the third-party
17 payors behave and know as they -- as they
18 have behaved and known historically, and
19 that's what I assume.

20 Q. (By Mr. Goldman) I'm afraid I just don't
21 understand and I need to understand this. So very -- I
22 understand there's an issue for you about if they knew,
23 could they respond, and I want to put that aside. I wanted
24 to know do you make an assumption as to whether most
25 third-party payors were unaware of the 5 percent change?

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2 A. I -- I make the assumption -- it's this issue of
3 "most" --

4 Q. I'm just using -- I'm quoting you.

5 A. Right. You are?

6 Q. Yes, I am. You said, "Most were unaware, very few
7 were aware." That's what I have in my notes.

8 MR. SOBOL: Objection to the form.

9 Q. (By Mr. Goldman) And I don't want you to be bound
10 by that. My question simply is: Do you assume that most
11 third-party payors were unaware of the 5 percent change?

12 A. I -- I assume that many third-party payors were
13 unaware of the third -- of the change based on what I've
14 seen of awareness of third-party payors, period.

15 Q. Okay. Now, if you recently read Judge Saris's
16 opinion, you see she refers to a potential of 11,000 of
17 third-party payors being in the MDL class. There are a lot
18 of third-party payors out there?

19 A. There are.

20 Q. Would you be able to tell me, when you say, "many
21 were unaware," what percentage of the total of third-party
22 payors you include as in the group who were unaware for
23 purposes of your assumption? Is it 50 percent? 75
24 percent? What -- what constitutes "many"?

25 A. I would -- I'm -- I'm speculating here. The --

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2 MR. SOBOL: Motion to strike.

3 Q. (By Mr. Goldman) You don't know?

4 A. Well, I -- I'm -- I have opinions but it's -- it's
5 the -- but it -- based -- I would say the preponderance of
6 third-party payors did not have an understanding of this --
7 of this change and this markup based on the types of
8 deposition testimony I've seen, but this is a -- that's
9 merely a guess.

10 Q. Okay. I want to stay away from understanding of
11 it, but I want to stay with aware of the 5 percent change
12 in the spread. Is there a difference in your terminology
13 of "many" as opposed to "preponderance"?

14 MR. SOBOL: Objection.

15 THE WITNESS: Yeah. Many is -- you
16 know, many is, you know, could be 50/50. I
17 would say --

18 Q. (By Mr. Goldman) Over 50 percent?

19 A. I -- yes.

20 Q. Over 60 percent?

21 A. I don't know.

22 MR. SOBOL: Objection to the form.

23 MR. GOLDMAN: We got the answer.

24 Q. (By Mr. Goldman) Now, was -- there was an effort
25 to you -- you assume, to hide, and my question is: Was

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2 that -- do you assume that effort was successful throughout
3 the entire class period; that is, from the time the 5
4 percent was implemented and hidden, it remained hidden from
5 whoever it was being hidden from consistently over a
6 four-year -- four-plus-year period of time or did it -- do
7 you assume it leaked out to some people?

8 MR. SOBOL: Objection to the form.

9 Q. (By Mr. Goldman) What's your assumption?

10 A. My assumption is the following, and why don't we
11 just, you know, get this on the record, because you keep
12 coming back to it over and over again from different
13 directions: The -- the scheme was entered into as alleged,
14 I'm assuming, in August of 2001; and it didn't affect all
15 drugs at once, so people couldn't have suddenly said, oh,
16 my God, all these drugs are going up, what's going on? It
17 happened incrementally; as drug prices were being renewed,
18 there would be an increase.

19 Now, as third-party payors and as the people who
20 get the AWP and the WAC data, they will get it, they will
21 -- reimbursements will be paid based on AWP. That's the
22 major thing that they look at. As far as I see with
23 reimbursement, negotiations -- the preponderance of
24 negotiations are off of AWP. So when -- when third-party
25 payors get AWPs, they can get WACs if they want to. It is

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2 not my understanding -- I've seen no evidence that there
3 are people -- third-party payors -- within third-party
4 payor claim department that are looking at WAC/AWP spreads
5 and saying -- and monitoring this like a radar screen and
6 that they're locked onto it.

7 So this is something that's slowly diffused
8 through the system over the NDCs as they show up in my
9 Figure 1, and the important thing to these third-party
10 payors was AWP. Now, they could get WAC if they wanted to.
11 So anybody could know if they got the data. The question
12 is: Did it interest them, was it their job to go out and
13 follow this and then report to somebody to say, hey, look
14 what's going on here. We've got to do something about
15 this.

16 And what I'm saying is that given the fact that
17 they did this at a time when price changes normally came
18 about, it was not something that they said: On January 1,
19 2002, we're raising all of these prices. That would have
20 drawn attention to the third-party payors. So it was done
21 incrementally. It was done stealthily. Anybody -- you
22 know, question of knowing, anybody could go out and get
23 that data, but were people looking at that? The
24 preponderance of people were not looking at that, is my
25 understanding as I understand the way reimbursement is done

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2 here, and that -- that some people may have started to
3 understand this, but institutionally they were locked into
4 contracts that were determined to be P less whatever and
5 rebates.

6 And so there was an inertia of any kind of --
7 there was an inertia in an understanding. There was an
8 inertia in a response. And all these different, you know,
9 do they know this, do they know that, how many, blah, blah,
10 blah, that's what characterizes all my understanding of all
11 of the third-party payors.

12 Q. So would it be fair to say from what you said that
13 over the class period, that there were more and more people
14 learning about the 5 percent increase in the spread?

15 MR. SOBOL: Objection.

16 THE WITNESS: I don't know.

17 MR. SOBOL: Motion --

18 Q. (By Mr. Goldman) You don't know?

19 MR. SOBOL: Objection.

20 THE WITNESS: I --

21 MR. SOBOL: Wait a second, Ray.

22 Objection. This has been asked and
23 answered repeatedly for the past 15
24 minutes, and it's also beyond the scope of
25 what he's -- he has said he is asked in his

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2 based on the spread -- on the spread that was not
3 understood by them.

4 Q. So I now have the foundation for the questions I
5 want to ask. Tell me economically why is it if the
6 third-party payors had been aware of ASP, what the ASP was
7 and, therefore, the spread between the ASP and these
8 artificially high AWPs, that would have not continued; that
9 spread would not have -- have existed or continued in the
10 marketplace? What is the economic principle behind that?

11 A. That that spread would --

12 MR. SOBOL: I'm sorry. I'm sorry.

13 Objection.

14 Q. (By Mr. Goldman) Yeah. The spread between the
15 ASP and the -- these inflated AWPs, if it had been known to
16 the third-party payors, what would they have done?

17 A. Well, I think Dr. Berndt -- I mean let's focus on
18 those drugs that -- for which greater attention was -- was
19 focussed on this issue and what Dr. Berndt has said in
20 various places in his report is that there was -- when the
21 spreads were unknown, when it was not clear what was going
22 on, that there were possibilities for, I think he said,
23 mischief and abuse; and that third-party payors, when they
24 were made aware -- and these were large third-party payors
25 -- were made aware of the size of this spread, they were

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2 flabbergasted. They were reimbursing off of an AWP that
3 was so far above the acquisition costs of the doctor -- of
4 the physicians, they were flabbergasted.

5 Judge Saris referred to these as "the mega
6 spreads." Now, if I'm a third-party payor and doctors are
7 coming to me and saying, well, look, I want to be
8 reimbursed at AWP less 15 and I know that the doctors are
9 getting this at what is 75 percent below that, so that
10 would be a spread of three or four hundred percent on the
11 ASP, they would have said, I'm not -- you know, I'm not
12 going to pay you AWP less 15. I'm going to negotiate more
13 aggressively.

14 Q. And that would have been what would have likely
15 happened if the third-party payors were aware of what ASP
16 actually was, correct?

17 A. If the third-party payors -- again, we have to --
18 you know, we keep talking a little bit about this is
19 hypothetical in Chicago school, you know, if they knew
20 about this bid of excess fees, you know, there's going to
21 be heat-seeking missiles that go and compete them away. I
22 think we have to also keep in mind what Dr. Berndt put very
23 well of the importance of being unimportant; that the drug
24 spending generally has been one of the smallest elements of
25 third-party payor reimbursement. So they haven't had swat

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2 teams focussing on those kinds of fees in trying to manage
3 them closely. It's been on hospitals, physicians, other
4 kinds of things.

5 But suppose we're in a state of the world where
6 all that other stuff has been worked out by the third-party
7 payors and they started to know about this information,
8 which does not seem to be the case, as Dr. Berndt suggests
9 over the period of the nineties, over much of the MDL
10 period. They would use that information to try and
11 negotiate aggressively if they -- if they had known about
12 that.

13 Q. Okay. "If they had known about that" meaning
14 about what ASP actually was?

15 A. That's correct.

16 Q. So they were missing one of the pieces to know
17 what the spread was; they were missing what the ASP was,
18 correct? They knew what the AWP was. They didn't know
19 what the ASP was, correct?

20 A. That's correct.

21 Q. And I want to see if you'll agree with me, in our
22 case, unlike what you found there, the spread that we're
23 talking about here, as you point out in the footnote, AWP
24 and WAC, the market -- people in the marketplace can learn
25 both pieces of the equation to know the spread?

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2 A. The -- they can. The WAC and the AWP is available
3 from the electronic databases.

4 Q. Now, do you know whether there were steps
5 manufacturers could have taken, if they wanted to, in the
6 face of learning about the 5 percent change in spread?

7 MR. SOBOL: Mel, do you mean
8 manufacturers or TPPs?

9 MR. GOLDMAN: No. I'm sorry. I'm
10 off -- I left TPP. I'm now going back to
11 the manufacturers --

12 MR. SOBOL: Okay.

13 MR. GOLDMAN: -- some of whom, as you
14 pointed out, the complaint says were aware
15 of this, complained about it.

16 Q. (By Mr. Goldman) And I'm asking were there things
17 manufacturers could have done upon learning of the 5
18 percent change to -- in an attempt to change that, if they
19 had wanted to?

20 A. Well, I cite, as I know you know, I cite one of an
21 unnamed manufacturer that objected to the new markup and
22 said that they -- there was something that wanted to be --
23 this is in Footnote 12 and it quotes -- it cites a
24 manufacturer in 2003 that said they wouldn't -- they didn't
25 want to report the AWPs, given the fact that the spread had

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2 haven't looked at this because it was not
3 relevant to what I was asked to do, given
4 what I was asked to assume, so I can't --
5 you know, what I --

6 Q. (By Mr. Goldman) I'm moving on.

7 A. I'd look where I would have to look.

8 Q. I'm moving on.

9 A. Okay.

10 Q. So can you tell me among these contracts, that is
11 all the contracts that were, as I say, legally extant, that
12 existed during the class period, what the typical
13 termination provision is in those contracts or is there a
14 typical termination period?

15 A. Asked and answered.

16 Q. You don't know?

17 A. I didn't look at that. It was not relevant to
18 what I was asked to do.

19 Q. So as far as being locked into a contract as a
20 part -- as opposed to not being able to understand or deal
21 with or -- with what was happening, I'm talking about being
22 locked into a contract that you can't get out of, wouldn't
23 it make a difference to you whether or not the contract was
24 terminable?

25 A. If I had seen evidence of any type of response

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2 that would suggest to me that -- that that was necessary, I
3 -- that would be something that would -- would -- I would
4 -- I could look at if -- when I got to the stage of
5 liability or where that would arise in the analysis. For
6 purposes of this analysis, what I've been asked to assume
7 is that there was -- there was this scheme, the third-party
8 payors were not able to respond to this scheme, and that
9 comported with -- I found no evidence that contradicted
10 that set of assumptions. And I certainly didn't -- I just
11 saw no evidence that third-party payors were responding in
12 a way either with contract renewals or with some kind of
13 renegotiation at all, period.

14 Q. Would it be correct, you don't need to know what
15 the nature of the termination provisions of any are in
16 these contracts in order to render the opinions you're
17 giving here?

18 A. Given what I've been asked to assume, that is
19 not -- I do not need to look at that.

20 Q. All right. Do you know whether there -- these
21 contracts are amendable?

22 A. I would -- no. I -- all contracts, I would
23 assume, have some ability to amend but I've not --

24 Q. Again, whether or not they were amendable or
25 whether they were amended during the class period would not

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2 THE WITNESS: I've seen no evidence
3 of -- in this particular case of this
4 particular set of allegations that it did.

5 Q. (By Mr. Goldman) Have you asked -- have you asked
6 counsel to provide you with discovery or any information on
7 this subject?

8 A. At this point, nothing more than what I've
9 received with the -- with the complaint.

10 Q. Have you gone out to look at it to see what the
11 answer to my question would be?

12 A. I will assume that it -- at the stage of
13 liability, if I'm asked to do it, that's when I would do
14 that.

15 Q. How did you treat copays in your -- in your
16 formulaic methodology for computing aggregate damages?

17 A. I -- I looked only at ingredient costs and the
18 plan was to look at ingredient costs.

19 Q. Why didn't you take into account copays?

20 A. Because I was -- because the copays, for the most
21 part, are unrelated to the effects of the scheme.

22 Q. How do you know that they're unrelated?

23 A. Because everything I've seen tells me that the --
24 for this set of drugs, copays are flat for the
25 self-administered branded drugs.

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2 Q. Tell me everything upon which you base the
3 statement that, for the most part, copays are flat.

4 A. Every --

5 MR. SOBOL: Objection to the form.

6 THE WITNESS: Every case and every --
7 we're not talking about
8 physician-administered drugs here?

9 Q. (By Mr. Goldman) No. We're talking about
10 self-administered.

11 A. Self-administered drugs. I have seen nothing that
12 I recall that shows me -- that tells me in -- for private
13 sector third-party payors that copays are coinsurance, that
14 they vary with the AWP --

15 Q. Okay. I want you to assume they are flat for the
16 moment. If they are flat, why shouldn't they be taken into
17 account in your formulaic methodology?

18 MR. SOBOL: Objection to the form.

19 THE WITNESS: Well, if I take -- in
20 the same way that I've been asked to assume
21 and seen nothing to the contrary that the
22 reimbursement is determined by the allowed
23 amount, which is an allowed amount for the
24 ingredient cost, and then there's a
25 dispensing fee and then there's a copay

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2 COMMONWEALTH OF MASSACHUSETTS MIDDLESEX, SS.
3

4 I, NICOLE E. GUILBERT, a Certified
5 Shorthand Reporter and Notary Public duly
6 commissioned and qualified in and for the
7 Commonwealth of Massachusetts, do hereby
8 certify that there came before me on the 4th
9 day of October, 2006, at 9:46 a.m., the person
10 hereinbefore named, RAYMOND S. HARTMAN, who
11 provided satisfactory evidence of
12 identification as prescribed by Executive
13 Order 455 (03-13) issued by the Governor of
14 the Commonwealth of Massachusetts, was by me
15 duly sworn to testify to the truth and nothing
16 but the truth of his knowledge concerning the
17 matters in controversy in this cause; that he
18 was thereupon examined upon his oath, and his
19 examination reduced to typewriting under my
20 direction; and that this is a true record of
21 the testimony given by the witness to the best
22 of my ability.

23 I further certify that I am neither
24 attorney or counsel for, nor related to or
25 employed by, any of the parties to the action
in which this deposition is taken, and
further, that I am not a relative or employee
of any attorney or counsel employed by the
parties hereto or financially interested in
the action.

26 My Commission Expires: May 7, 2010

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 C.A. No.: 1:05-CV-11148-PES
4 Volume II
5 Pages 279 to 397
6 Exhibits: (See Index)

6 ORIGINAL

7 NEW ENGLAND CARPENTERS HEALTH)
8 BENEFITS FUND, PIRELLI ARMSTRONG)
9 RETIREE MEDICAL BENEFITS TRUST;)
10 TEAMSTERS HEALTH & WELFARE FUND OF)
11 PHILADELPHIA AND VICINITY; and)
12 PHILADELPHIA FEDERATION OF)
13 TEACHERS HEALTH AND WELFARE FUND,)
14 Plaintiffs,)
15)
16 -vs-)
17 FIRST DATABANK, INC., a MISSOURI)
18 CORPORATION, a Delaware Corporation.)
19 Defendants.)

14 * * * * *

15
16 DEPOSITION of DR. RAYMOND S. HARTMAN, called
17 as a witness by and on behalf of the Defendants,
18 pursuant to the applicable provisions of the
19 Massachusetts Rules of Civil Procedure, before
20 Lisa L. Gross, Registered Professional Reporter and
21 Notary Public in and for the Commonwealth of
22 Massachusetts, taken at the offices of Bonner,
23 Kiernan, Trebach & Crociata, One Liberty Square,
24 Boston, Massachusetts, on Thursday, October 5, 2006,
25 commencing at 9:38 a.m.

1 DR. RAYMOND S. HARTMAN

2 Q. And the reason that you do that is
3 because the effect of the five percent is
4 different -- you don't use five percent
5 because there's a 15 percent discount that's
6 not reimbursed, correct?

7 MR. SOBOL: Objection to the form.

8 Q. You can't say that the five-percent
9 Scheme effected all of AWP, because the
10 reimbursement was only for 85 percent of it?

11 MR. SOBOL: Objection the to the
12 form.

13 Q. Is that right?

14 A. That's one way of stating it.

15 Q. In other words, your math is -- when we
16 take into account this 15 percent, you are
17 just -- we have a lot of algebra here "pre"
18 and "post," but when we take it into the 15
19 percent, you are just using a five percent
20 increase in WAC against every NDC as your
21 calculation?

22 A. Well, that's -- the whole notion of the
23 Scheme is that AWP increased --

24 Q. Yeah, I understand. But why do we need
25 all this, this "pre, post" and all of this

1 DR. RAYMOND S. HARTMAN

2 stuff here, isn't it just simply, it's five
3 percent of WAC because of the 15 percent, it's
4 4.25?

5 A. I would assume that if I had written it
6 that way, people would, except for learned
7 counsel at the table, people would say, how --
8 where did these calculations come from.

9 Q. Not me, I would say you thought there
10 was a five percent increase in WAC so you
11 applied five percent. But that's just me.
12 That's just me.

13 So let me show you another document.
14 Let's take a short break. No.

15 (Discussion off the record.)

16 MR. GOLDMAN: We will mark next a
17 document entitled Declaration of Susan Hayes in
18 Support of Plaintiffs' Motion for Class
19 Certifications.

20 (Exhibit 8 marked
21 for identification.)

22 Q. Showing you Exhibit No. 8, Dr. Hartman,
23 and ask you whether you've seen some or all of
24 that document before today?

25 A. Not that I recall.

1 C E R T I F I C A T E
2

3 I, Lisa Lee Gross, Registered Professional
4 Reporter and Notary Public duly commissioned and
5 qualified in and for the Commonwealth of
6 Massachusetts, do hereby certify that there came
7 before me on the day 5th of October, the person
8 hereinbefore named, who was by me duly sworn to
9 testify to the truth and nothing but the truth of
10 their knowledge touching and concerning the matters in
11 controversy in this cause; that they were thereupon
12 examined upon their oath, and their examination
13 reduced to typewriting under my direction and that the
14 deposition is a true record of the testimony given by
15 the deponent.

16 I further certify that I am neither attorney nor
17 counsel for, nor related to or employed by, any of the
18 parties to the action in which this deposition is
19 taken, and further that I am not a relative or
20 employee of any attorney or counsel employed by the
21 parties hereto or financially interested in this
22 action.

23 In Witness Whereof, I have hereunto set my hand
24 and affixed my seal this 9th day of October, 2006.

25 
26 Notary Public
27 My Commission Expires:
28 January 17, 2011

Exhibit 26

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORIGINAL

NEW ENGLAND CARPENTERS HEALTH)
BENEFITS FUND, PIRELLI)
ARMSTRONG RETIREE MEDICAL)
BENEFITS TRUST, TEAMSTERS)
HEALTH & WELFARE FUND OF)
PHILADELPHIA AND VICINITY,)
PHILADELPHIA FEDERATION OF)
TEACHERS HEALTH AND WELFARE)
FUND, and DISTRICT COUNCIL 37)
HEALTH & SECURITY PLAN)

Plaintiffs,) Civil Action

-vs-) No. 1:05-CV-11148-PBS

10 FIRST DATABANK, INC., a)
11 Missouri Corporation; and)
12 McKesson CORPORATION, a)
Delaware Corporation,)

Defendants.)

The videotaped deposition of SUSAN ALLENE HAYES,
called for examination, taken pursuant to the Federal
Rules of Civil Procedure of the United States District
Courts pertaining to the taking of depositions, taken
before NANCY L. BISTANY, a Notary Public within and for
the County of Cook, State of Illinois, and a Certified
Shorthand Reporter of said state, CSR No. 84-1857, at
200 North Columbus Drive, Chicago, Illinois, on
October 26, 2006, at 9:29 a.m.

C O N F I D E N T I A L

P U R S U A N T T O P R O T E C T I V E O R D E R

1 BY MR. GOLDMAN:

2 Q. Sure. You testified in Ohio regarding
3 rebates and what you'd expect to find in agreements and
4 understandings of payors and PBMs regarding those terms,
44:32AM 5 correct?

6 A. Yes.

7 Q. And I'm just wondering if you have in your
8 library or your database information that goes to what are
9 the normal provisions or terms in a payor-PBM contract?

44:44AM 10 A. No.

11 Q. You refer in your declaration to having seen
12 many of them, correct?

13 A. That's correct.

14 Q. Hundreds, correct?

44:51AM 15 A. Correct.

16 Q. Either you or people who work for you have
17 seen them?

18 A. Correct.

19 Q. And is there anything in your -- in your firm
44:58AM 20 at POS in your library, your database or anywhere else
21 which will show what is contained in those hundreds of
22 contracts you're familiar with?

23 A. No. Our methodology at POS -- I mean, we're
24 a very small office, a little bit bigger than this room

1 guide, I've never seen something like that.

2 Q. All right. So let me describe a subject, and
3 that would be reimbursement to pharmacies for the drugs
4 that they sell, reimbursement by PBMs. And another would
5 be payment by payors to PBMs for drugs purchased by their
6 members from retail pharmacies. So I'm talking about
7 self-administered drugs.

8 Are you aware of any publications that are
9 authoritative in either of those two areas or both?

10 A. I mean, I think I've seen articles on those.
11 I don't think there's any, like, ongoing, every month
12 publication regarding those issues.

13 Q. Do you feel you're an expert on the subject,
14 the first part of my equation, reimbursement of retail
15 pharmacies for the drugs they sell by -- reimbursement by
16 PBMs of retail pharmacies for the drugs they sell?

17 A. I believe I'm expert in that area. I believe
18 I understand how that works.

19 Q. And what's -- how did you come to have that
20 understanding, through the audit process?

21 A. Through the audit process as well as, you
22 know, working for Walgreen's Corporation and knowing, you
23 know, how retail pharmacies are reimbursed; through,
24 again, PBM audits, through my understanding of the

1 industry, through talking to PBMs about how they reimburse
2 retail network pharmacies. ~~On-the-job training~~ I guess
3 you would say.

4 Q. And the same would be true for how payors
5 reimbursed PBMs for the drugs that their insureds or
6 members purchase from retail pharmacies?

7 A. And I think my expertise in that category is
8 probably greater than the former.

9 Q. It arises out of the audit work you've done?

10 A. Yes.

11 Q. And the litigation support work you've done?

12 A. Yes.

13 Q. Now, is there any article that you've written
14 or book that you've been a participant in that I could
15 look at that would be pertinent or relevant to opinions
16 you're giving in this case?

17 And you have your -- you have a list of the
18 books and articles. Are there any there that I would look
19 at that would be informative or relevant to what you're
20 giving opinions about here?

21 MS. FEGAN: What are you looking for?

22 THE WITNESS: My --

23 MS. FEGAN: Your CV?

24 THE WITNESS: Yes.

1 A. Well, wouldn't First Databank know that?

2 Q. I'm asking you if you have seen any
3 information?

4 A. No.

5 Q. Have you heard any speeches or received any
6 information from any other source about the extent to
7 which payors during the period I'm referring to subscribed
8 to First Databank data?

9 A. You know, let me just say, it's virtually
10 unheard of that a plan sponsor would ever go by First
11 Databank information. It's just not done.

12 It's expensive. They don't have the staff to
13 do anything with it. They don't have the expertise to
14 understand it if they had it.

15 So I can't say emphatically that there has
16 never been a plan sponsor to buy a First Databank. I'm
17 sure there's somebody out there, but I've never heard
18 anything written about it. I've never talked to anybody
19 about it. It's just not done in the industry. I'm an
20 expert in the industry. It's just not done.

21 Q. Well, I understand you're an expert. I'm
22 just trying to get the basis for your expert opinion.
23 Okay.

24 Is there anything more that you based it on

1 was doing, and they would negotiate a better deal.

2 Whether they did or didn't, I have no idea.

3 BY MR. GOLDMAN:

4 Q. Yeah, but see, you're an expert. I'm asking
04:03:05PM 5 you what you would assume would happen, okay, based upon
6 your knowledge of the industry. You say you're holding
7 yourself out as an expert.

8 You told me the second category, the one
9 that's not pass-through but is based on the spread, is the
04:03:15PM 10 more prevalent type of arrangement, correct?

11 A. Yes.

12 Q. So assuming that's the arrangement, if the
13 PBM understood that the retailer was not making more
14 profit due to this 5 percent, don't you believe they would
04:03:26PM 15 go in there and negotiate better terms for the PBM in the
16 face of that?

17 A. That would be a logical assumption. Whether
18 it happened, I'm not sure, but that -- one would assume
19 that.

04:03:36PM 20 Q. The PBMs are fairly sophisticated, smart
21 people, correct?

22 A. Correct.

23 Q. And they're quite interested in profit margin
24 for themselves; isn't that your opinion?

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4

5 I, NANCY L. BISTANY, a Notary Public within and
6 for the County of Cook, State of Illinois, and a Certified
7 Shorthand Reporter of said state, do hereby certify:

8 That previous to the commencement of the
9 examination of the witness, the witness was duly sworn to
10 testify the whole truth concerning the matters herein;

11 That the foregoing deposition transcript was
12 reported stenographically by me, was thereafter reduced to
13 typewriting under my personal direction and constitutes a
14 true record of the testimony given and the proceedings
15 had;

16 That the said deposition was taken before me at
17 the time and place specified;

18 That the reading and signing by the witness of
19 the deposition was agreed upon as stated herein;

20 That the deposition terminated at 5:19 p.m.;

21 That I am not a relative or employee or attorney
22 or counsel, nor a relative or employee of such attorney or
23 counsel for any of the parties hereto, nor interested
24 directly or indirectly in the outcome of this action.

1 IN WITNESS WHEREOF, I do hereunto set my hand
2 and affix my seal of office at Chicago, Illinois, this
3 29th day of October, 2006.

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Notary Public, Cook County, Illinois

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My Commission expires December 16, 2009.

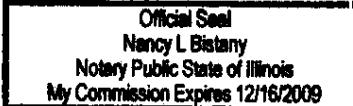
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CSR No. 84-1857.

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Exhibit 27

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORIGINAL

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

1 actually have a scorecard when you're doing the
2 competitive bid process to rate one bidder over another,
3 am I correct?

4 A. That's correct.

5 Q. And Hewitt developed its own scorecard, am I
6 correct, for that purpose?

7 A. We have a template that we review with the
8 client and adjust the weightings according to their
9 specifications.

10 Q. Why is it that utilization management is more
11 important than forecast cost?

12 MS. CONNOLLY: Objection to form.

13 BY MR. GOLDMAN:

14 Q. I mean, I would think cost would be number
15 one, and I'm wondering why it isn't?

16 A. Well -- keep going?

17 Q. Yes.

18 A. My opinion as a -- as, I guess, a clinician
19 here, is that if all you look at is the up-front cost of a
20 drug, who cares if you're dispensing the most expensive
21 one at the end of the day? What matters is are you
22 dispensing the most affordable drug?

23 The discounts become less important. If you
24 have a great discount, and you dispense the most expensive

1 drug, that really only gets -- doesn't get you much if
2 there were more affordable alternatives that should have
3 been dispensed in the long run.

4 Q. So on your scorecard or your template
5 scorecard, would you actually give a score to the forecast
6 cost?

7 A. We would assign a weighting, yes.

8 Q. And the same thing for the utilization
9 management?

10 A. Based on the responses, yes, that are
11 provided.

12 Q. Under your current template, what is the
13 ratio difference -- the ratio between scoring -- what is
14 the highest score you can get on forecast costs and the
15 highest score you can get on -- is there a way to weight
16 these two that way through your scorecard?

17 A. Absolutely. So each -- again, it's a
18 template, and you've got these various buckets. And based
19 on where the client is in terms of maybe they don't want
20 to do utilization management, which does occur --
21 financials is obviously going to weigh heavier -- we can
22 adjust those based on whatever the client's independent
23 strategy is going to be.

24 Q. Okay. Now, I want to focus on forecasting

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4

5 I, NANCY L. BISTANY, a Notary Public within and
6 for the County of Cook, State of Illinois, and a Certified
7 Shorthand Reporter of said state, do hereby certify:

8 That previous to the commencement of the
9 examination of the witness, the witness was duly sworn to
10 testify the whole truth concerning the matters herein;

11 That the foregoing deposition transcript was
12 reported stenographically by me, was thereafter reduced to
13 typewriting under my personal direction and constitutes a
14 true record of the testimony given and the proceedings
15 had;

16 That the said deposition was taken before me at
17 the time and place specified;

18 That the reading and signing by the witness of
19 the deposition was agreed upon as stated herein;

20 That the deposition terminated at 2:00 p.m.;

21 That I am not a relative or employee or attorney
22 or counsel, nor a relative or employee of such attorney or
23 counsel for any of the parties hereto, nor interested
24 directly or indirectly in the outcome of this action.

1 IN WITNESS WHEREOF, I do hereunto set my hand
2 and affix my seal of office at Chicago, Illinois, this
3 31st day of October, 2006.

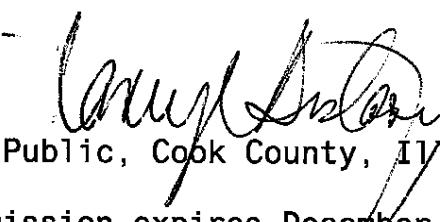
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Notary Public, Cook County, Illinois

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My Commission expires December 16, 2009.

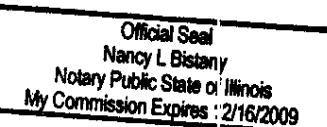
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CSR No. 84-1857.

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Exhibit 28

From: Fair, Rick [OMP]
Sent: Thursday, May 09, 2002 5:47 AM
To: Larkin, Cristina [OMP]; Borgia, Mike [HCS]
Cc: Peterson, Mark [OMP]; Inserra, Robert [OMP]; Dugan, Patrick [OMP]; Quimbayo, Yancy [OMP]; Russell, Dale [OMP]; Moreland, Jennifer [HCS]
Subject: FW: AWP

Cristina & Mike,

Given that our [REDACTED] this will have potentially large impact on [REDACTED] and Medicaid Best Price. Can we take the position with [REDACTED] that we will pay rebates as a % of our recommended wholesale price in lieu of First Databank's AWP? If not, we will need to assess the potential financial exposure and then get together to determine our options and action steps.

Let me know.

Rick

Rick Fair
 Director, National Accounts
 Ortho-McNeil Pharmaceutical, Inc.
 Phone: (908) 218-6217
 Fax: (908) 218-7017

-----Original Message-----

From: Fair, Rick [OMP]
Sent: Thursday, May 09, 2002 6:44 AM
To: Iannucci, Art [OMP]; Peterson, Mark [OMP]; Wright, Marla [OMP]
Cc: Russell, Dale [OMP]; Valcarcel, Luis [OMP]; Gribbin, Tim [OMP]
Subject: AWP

Team,

You should be aware of a recent development that will affect our customers. By way of background, First Databank is the company that tracks NDCs and pharma pricing information and publishes it to the industries (PBMs, managed care, retail, and pharma manufacturers). They do this via survey of wholesalers. Traditionally, wholesalers have used our recommended wholesale price, which is 20% higher than our WAC (or DLP in J&J parlance) for all OMP products except those acquired from Alza (we inherited those with a recommended 25% mark-up). Some other manufacturers have priced their products at 25% higher than WAC, benefiting the retailer who gets paid on AWP.

Recently, a couple of the major wholesalers have begun moving our products to 25% mark-ups, and First Databank's survey has picked this up. Many of our prices are now being published with a 25% markup. This will look like a price increase to our customers, even though OMP has taken no overt action. I would ask that you have the team keep an ear out with their customers and provide any information regarding any managed care response to us. We heard Joe Sinopoli from Harvard Pilgrim mention this at the ORTHO EVRA launch, and he indicated they are in the process of renegotiating their retail contracts because of this, potentially to a WAC+% agreement in lieu of AWP-%. We clearly don't want to draw attention to higher pricing, but if it comes up, our customers should know that this is not an OMP pricing action.

Let me know if you have questions.

Rick

Rick Fair
 Director, National Accounts
 Ortho-McNeil Pharmaceutical, Inc.
 Phone: (908) 218-6217
 Fax: (908) 218-7017

Exhibit 29

Kanwal MD, Neeraj

From: Chen, Michael Z. (STL) [MZChen@express-scripts.com]
Sent: Tuesday, February 27, 2007 2:42 PM
To: Kanwal MD, Neeraj
Subject: RE: First DataBank Litigation

Hey Dr Kanwal

I think when you take the utilization of the 8500 drugs and the 4% and spread it across the entire DIV it amount to we gave you 1.5% relief across all your medications not just the 4% of the targeted brands. Thats why the impact in 02 was only .7-.9%. I asked about the impact of the 8500 drugs. Our internal teams are aware that you want this. My problem is that I dont know whats in that bucket yet. I am trying to come up with some kind of estimate for you but I am at a loss. Thats why you dont have this data yet.

I have to come to paramount at the end of March. Let me see what Jennifer's schedule is. If I can squeeze the meeting in earlier I will do a conference call.

I will work on this today.

Mike

From: Kanwal MD, Neeraj [mailto:Neeraj.KanwalMD@ProMedica.org]
Sent: Tuesday, February 27, 2007 1:29 PM
To: Chen, Michael Z. (STL)
Subject: RE: First DataBank Litigation

My advice is that I wouldn't pass that stuff around your office, it will be misinterpreted, it was for your info only so you can see what I read about.

The bottom line is that you folks want us to pay the same or more while listed prices are going down. I understand your points about our discounts, but it wasn't 4%. Where is the other 2.5%?. I will await your company "sell." Are you and Jennifer scheduling a call or coming to Toledo?

From: Chen, Michael Z. (STL) [mailto:MZChen@express-scripts.com]
Sent: Tuesday, February 27, 2007 2:24 PM
To: Kanwal MD, Neeraj
Subject: RE: First DataBank Litigation

Hi Dr Kanwal

Thanks for the info. I will pass it on. It kind of explains why everyone is so hot about this topic but doesnt actually Hartman doesnt really go into detail on the 15% discount rate or why it exists in the first place. The fact is that AWP is not a credible reference and that PBMs negotiate a discounted rate based on market supply and demand is not a part of his paper.

He assumes that if the AWP is adjusted that all things remain equal in his calculation. Thats a problem for us for the reasons we discussed before. In 02 the industry put in a price shock, as a result we had to go out and recontract with pharmacies to get the money back to you....that is the basis of the analysis I sent you a while back. In 04 we got you rate relief in the amount of about 1.5% That was well above the .7-.9% impact we forecasted back then of the 4% increase.

Ordering the previous analysis was risky to me. (nobody else took this approach) I was not sure if the data I got was going to make matters worse but I put my faith in the PBM business model and rolled the dice. Fortunately, it turned out that we did reduce the impact to Paramount in 04, most likely by squeezing the pharmacies out of the margin they previously benefitted from and moving some money around too. Thats why the pharmacies are refusing to accept the adjustment today.

To me, the crux of this argument revolves around whether you think pharmacy pricing is an efficient market. Without PBMs it surely wouldnt be. But with PBMs I think there is enough efficiency to address the above issues (albeit not real time like the stock market) I dont think adding another price shock is the answer to this issue.

Lets see what the AWP guys (internally) think of this.

Thanks
Mike

From: Kanwal MD, Neeraj [mailto:Neeraj.KanwalMD@ProMedica.org]
Sent: Tuesday, February 27, 2007 11:52 AM
To: Chen, Michael Z. (STL)
Subject: FW: First DataBase Litigation

This is for your info, incase your people haven't been sharing some of the info regarding the proposed awp settlement. This touches on the expected savings, pushback and one person's belief on outcome. I have other documents from the settlement, and can share them for your interest. The expectation remains that pricing will fall from first data bank and all FDB based pricing will fall.

We will see how effective your contracts are in dealing with the pushback from pharmacies who will naturally resist a price reduction. Did you set up a date with Jennifer to come to Toledo?

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